IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Writ Appeals No.478 and 1026 of 2007
and M.P.No.2 of 2007 in W.A.1026 of 2007

W.A.No.478 of 2007:
1.V.Gopinath
2.Sangath Apartment Phase I, II, III & IV
Owners Association,
rep.by its President
Mr.R.Ganesan
3.K.S.Mani
4.R.Dayalan ... Appellants/3rd Party in WP.4766/07

Vs.

1.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-6. ..Respondent/1st Respondent in WP.4766/07

2.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai. ..Respondent/2nd Respondent in WP.4766/07

3.Association of Vasanth Apartments Owners (Reg.No.18/2007)
rep.by its General Secretary,
100 Feet Bye-pass Road,
Velacherry,
Chennai-42. ... Respondent/Petitioner in WP.4766/07

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W.A.No.1026 of 2007:

The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai-600003 ... Appellant/2nd Respondent in WP.4766/07

Vs.

1.Association of Vasanth Apartments Owners,
rep.by its General Secretary,
100 Feet Bye-Pass Road,
Velachery,
Chennai-600042 ..Respondent/Petitioner in WP.4766/07

2.The Member Secretary,
C.M.D.A.,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600006. .. Respondents/1st Respondent in WP.4766/07

Writ Appeals preferred under Clause 15 of the Letters Patent as against the order passed by the learned single Judge of this Court in W.P.No.4766 of 2007, dated 20.2.2007. Presented to this Court under Article 226 of the constitution of India to issue a writ of mandamus directing the first respondent to permit the petitioner association on the develop 1164.75 sq.m. area of vacant lands comprised in comprising in Survey Nos.379/1 and 380/4 and reserved as Open Space for communal and recreational purposes in first respondent's approval in P.P.No.B1/24729/199/A/F/97 dated 16.5.97 as park with recreational facilities for the members of the petitioner association and maintain the same.

For appellants in
W.A.No.478 of 2007 : Mr.S.Kumar

For appellant in : Mr.P.S.Raman,
W.A.No.1026 of 2007 : Addl.Advocate General for
who is R.2 in Mr.A.Mohammed Gouse
W.A.No.478/2007 and Mr.J.Ravindran
and for R.1 in W.A.478/2007
who is R.2 in
WA.1026/2007

For R.3 in
W.A.478/2007, who : Mr.R.Selvakumar
is R.1 in
W.A.1026/2007

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COMMON JUDGMENT

ELIPE DHARMA RAO, J.

Vasanth Apartments was developed as a Group Development in S.Nos.376/2 and 3, 379/1 and 380/4 and 5 in Velacherry village within Chennai City and it contains 12 blocks, out of which 11 blocks, each containing 16 to 18 flats, are residential ones. The entire buildings were completed and the flats were sold to the public and completely occupied by the purchasers during 2001. The total extent of the layout being more than 10,000 sq.m., 10% of the area has been reserved as Open Space for communal and recreational purposes as per Rule 19(b)(ii) of the Development Control Rules and accordingly, as per the finally approved plan dated 16.5.1997, an extent of 1164.75 sq.m. (12,532 sq.ft.) area has been reserved as open space and transferred to the Chennai Metropolitan Development Authority by way of a Gift Deed dated 18.2.1994.

2. Thereafter, the Association of Vasanth Apartments Owners, has filed W.P.No.4766 of 2007 before this Court praying to issue a Writ of Mandamus, directing the Chennai Metropolitan Development Authority to develop 1164.75 sq.m. Area of vacant lands comprised in Survey Nos.379/1 and 380/4 and reserved as Open Space for communal and recreational purposes for the members of the said Association. The case of the said Association is that despite a lapse of 12 years from the date of gifting the property to the CMDA, the open space area had not been developed into a park and therefore, they have given a representation on 6.10.2006 seeking permission to maintain the area as a park and since there is no response, they have filed the writ petition.

3. A learned single Judge of this Court, has allowed the said writ petition directing the respondents therein to permit the petitioner/Association to maintain the open space area reserved as a park with recreational facilities in accordance with the Development Control Rules. It is also ordered that if the respondents come across any violation, it is always open to them to take action in accordance with law and that it is the duty of the respondents to maintain such open space area as park and if the respondents fail to do the same, the association of residents should always be welcomed to do the same subject to the provisions of the rules.

4. Aggrieved against the said order of the learned single Judge, the other residents of the area, who are not the parties to the writ petition, have filed Writ Appeal No.478 of 2007 on 5.3.2007, obtaining leave from this Court. Their contention is that at the time of construction, the land owners earmarked a portion of the land i.e. 11,836 sq.ft. as Open Space Regulation area for road and park and gifted the same to the CMDA by a gift deed dated 18.2.1994 and the Corporation of Chennai has formed a road in that land during the year 2003 itself and has been maintaining the same, but the Writ Petition No.4766 of 2007 had been filed suppressing the

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above fact. It has also been submitted that the Corporation, with a view to increase the road level, dumped the quarry rubbish on the side of the road, but the Association of Vasanth Apartments Owners has misconceived and focused to the Court that there is a threat of encroachment by private parties in the land and obtained the order and thereafter, they have suddenly blocked the road, which is the shortest link from West Velachery to East Velachery-Vijaya Nagar and also the access to Venkateswara Nagar, M.G.R.Nagar, Devikarumariamman Nagar etc. where 1 lakh people are living, by dumping debris and erected a board showing that the said area is a recreational park for the residents of Vasanth Apartments, as a result of which people are unable to get access to the other part of the road which caused great hardships to the public.

5. When this Writ Appeal No.478 of 2007 has come up for admission, the First Bench of this Court, by the order dated 3.4.2007 appointed Ms.D.Nagasaila as an Advocate-Commissioner to inspect the site to ascertain as to whether there is an alternative approach road to 100 feet bye-pass road barring the OSR area, which is under dispute.

6. Pursuant to the said directions, the learned Advocate-Commissioner has visited the disputed site on 8.4.2007 and submitted her report along with a sketch on 10.4.2007. In her report, the learned Advocate-Commissioner has submitted that while the disputed OSR site is not the only approach road to the 100 ft. bye-pass road, it was noticed that the first approach road viz. the Venkateswara Nagar third main road is very narrow, with too many bends, making it unsuitable for handling the large volume of traffic in this densely populated area; that the second approach road viz. Vijay Nagar first main road is also narrow, but is reasonably straight, as opposed to the first approach road and this second approach road, beginning at the Vijaya Nagar 1st main road and passing through the Devi Karumari Amman 4th street is however circuitous and creates a bottleneck at its entrance which is at the junction of the Vijaya Nagar Bus stand.

7. Thereafter, on 9.4.2007, the Corporation of Chennai has filed Writ Appeal No.1026 of 2007, as against the order passed in the Writ Petition No.4766 of 2007. It is the case of the Corporation that by the gift deed dated 10.2.2004, the donor had agreed to convey and assign, in the interest of public, unto the donee (viz. the Corporation) all that lands for roads, parks and other open space situate in S.Nos.379/1 (part) and 380/4 (part) which is for the use of public to the extent of 1100 sq.metre (11,836 sq.ft.); that in the year 2003 itself, the Corporation has formed a metalled road so as to provide a direct as well as short link to the Velachery 100 feet bye-pass road from the adjoining areas like Venkateswara Nagar, M.G.R. Nagar, Devi Karumari Amman Nagar etc.; that the Corporation has already initiated action for acquisition of Dhandeeswarar temple land, which is hardly 75 metres from the OSR land from HR and CE Department, so as to form shortest link Road from West Velachery to East Velachery-Vijaya Nagar; that nobody had objected the formation of metalled road in the area; that the disputed portion is already formed as a link

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road, connecting Velachery 100 feet bye-pass road to the areas such as Venkateswara Nagar, M.G.R.Nagar, Devi Karumari Amman Nagar etc. and no other road is available to link the said areas with short distance and by providing the link road, the residents numbering about one lakh will be benefited and the metalled road is in existence for the use of the public and it is under the maintenance of the Corporation of Chennai till date.

8. Since both these writ appeals arise from out of the order passed by the learned single Judge in W.P.No.4766 of 2007, dated 20.2.2007, they are heard together.

9. On a perusal of the entire materials placed on record and upon hearing the learned counsel on either side, we are able to find that Vasanth Apartments is situated on the 100 feet bye-pass Road in Velacherry, a fast growing commercial and residential hub of the city. As could be seen from the sketches filed not only by the Advocate-Commissioner but by the appellants as well, the Open Space area, if made use as a road after constructing a culvert or a bridge over the drain running along the entire length of the road, would, undoubtedly be a short-link Road to the 100 feet bye-pass road, providing easy and immediate access to the 100 feet bye-pass road to many of the local residents. On the other hand, if it is not made use of as a road and its entrance point at the petrol bunk on the 100 feet road is closed either by erecting any compound wall, as has been done by the Vasanth Apartments Owners illegally or by developing a park on the open space area, all the residents in the area have to take comparatively much long routes like either Venkateswara Nagar 3rd main road or Vijaya Nagar first main road, both seems to be narrow, presumably with heavy flow of traffic, taking into consideration the proximity of the locality.

10. There is no dispute that in compliance with the provisions of the Development Control Rules of the CMDA, the original owners of the land, while developing it into apartments, have executed a gift deed on 18.2.1994 in favour of the CMDA. The relevant portions from the said gift deed dated 18.2.1994 are extracted hereunder::

> "To comply with the rules and regulations prevailing now, the DONOR (the original owners) in the interest of public has agreed to transfer the roads and parks and other open spaces hereunder described through a gift deed in favour of DONEE (CMDA) and DONEE has agreed to accept the same.
>
> Now this indenture witnessth that the DONOR doth hereby give, grant, convey and assign in the interest of public unto the DONEE who hereby accepts the same all that lands for roads, parks and other open space situated in S.Nos.379/1 (part) and 380/4 (part) which is for the use of the public comprised in layout sketch enclosed within registration sub-district of Madras south and registration district of Madras Central and more particularly described in the schedule hereunder written and the DONOR doth

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hereby covenant with the DONEE that the DONOR now does have good right to grant, convey and assign the lands of roads/parks hereby granted, conveyed and assigned upto the "DONEE" with the manner aforesaid and that the "DONEE" shall and may at all times hereafter peacefully and quietly possess and enjoy the said lands of roads/parks free from all encumbrances whatsoever without any lawful eviction, interruption, claim, whatsoever, from or by the "DONOR" or any person claiming under or interest for him and further that the "DONOR" and all person having lawfully or equitably claiming any rights on roads/parks or interest with the said premises or any part thereof from under or interest for the "DONOR" or from or under any of his ancestors shall and will from time to time and at all times hereafter at the request of and cost of the "DONOR" do execute and register or cause to be done executed and registered all such acts, deeds and things whatsoever fro further and more perfectly assuring the said lands or roads and parks every part thereof unto the "DONEE" in the manner aforesaid or as shall or may be reasonably required."

11. While such are the averments in the gift deed, it has been contended on the part of the writ petitioner/Vasanth Apartments residents that the OSR area has to be used only for communal and recreational purposes of members of the Vasanth Apartments as they do not have any other space for recreational purposes. It has also been argued that the OSR area cannot be formed as a public road by the Corporation as the same is not permissible under the Development Control Rules, which has the overriding effect over the Statute governing the Corporation. They have placed reliance on the schedule of property in the gift deed, which reads as follows:

"All that piece and parcel of area measuring 1100 sq.m. Reserved for parks or open spaces and marked in red colour of the layout sketch enclosed herein situated in S.Nos.379/1 (Part) and 380/4 (Part) of Velacheri village...."

12. It seems the writ petitioner wants to seek benefit from the inappropriately couched wordings in the 'schedule' of the gift deed, which is differently worded than the import and purport of the gift deed, the contents of which are already extracted supra. The omission of the word 'roads' either inadvertently or otherwise in the schedule of the gift deed cannot give any right to the writ petitioner Association, so as to say that the OSR area has to be made use of only to form a park by the Corporation or on its failure by the residents association of the apartments, since any document has to be read in its entirety to understand its contents and not in piecemeal and selectively to suit one's convenience. As could be seen from the contents of the gift deed, as has already been extracted supra, the entire area has been assigned to the CMDA free from all encumbrances, in the interest of public, and nobody could claim any right or interest over the same including the donor himself.

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13. In this connection, it is useful to cull out the relevant portions in the "Table", appended to Part-III General Provisions in the 'Development Control Rules for Chennai Metropolitan Area', as amended up to September,2004, which are as under:

"B. Streets and Roads:

Description (1)	Minimum width (2)	Remarks (3)
(i) Streets intended to serve not more than 10 plots and/or subject to a maximum length of 120 metres	7.2. metres (24')	All streets shall become public. The land owners/developers shall hand over these street/roads portion through a deed to the local authority concerned, after forming the roads as per specifications given under relevant section of Chennai City Municipal Corporation Act or Panchayat Act or Tamil Nadu District Municipal Act
(ii) Streets intended to serve not more than 20 plots and/or subject to a maximum length of 240 metres	9.0 metres (30')	-do-
(iii) Roads of length more than 240 metres but below 400 metres	12.0 metres (40')	-do-
(iv) Roads of length between 400 metres to 1,000 metres	18.0 metres (60')	-do-
(v) Roads of length more than 1,000 metres	24.0 metres (80')	-do-

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14. From the above Rules, it is clear that all streets shall become public. Therefore, in no uncertain terms, it could be held that CMDA is the absolute owner of the land assigned to it by the original owners by way of the gift deed in the interest of public, but definitely not for the sole interest of the Vasanth Apartment occupants. Therefore, the entire writ petition filed by the Association of the Vasanth Apartment Owners under the assumption and presumption that the OSR land belongs to them, is completely a misconceived one and should have been dismissed at its threshold, since pursuant to the Gift Deed, the OSR land solely and wholly vests only with the CMDA and therefore, writ petitioner has no right to claim over the said OSR land.

15. From the report submitted by the learned Advocate-Commissioner that though the katcha road on the OSR site was not linked to the 100 ft.road, since the land adjacent to it was a petrol bunk, the people of that area were using the entry from the petrol bunk to approach the katcha road on the OSR site. It is also not in dispute that material was brought in by the Corporation of Chennai for the purpose of laying a pucca road on the OSR site.

16. The Association of Vasanth Apartments Owners allege that the first appellant in W.A.No.478 of 2007 by name V.Gopinath is having a residential complex on the Northern side of the OSR area and he converted a portion of his residence into six commercial shops without any approval of the CMDA for which both the CMDA and Corporation of Chennai remain silent spectator and failed to exercise their powers to demolish the said illegal commercial shops run by the first appellant without approval of the CMDA and the appellants in W.A.No.478 of 2007 with ill intention to usurp the OSR area for their own use under the guise of public road to legalise their illegally functioning commercial shops have filed the appeal. Since it is not the subject matter in this case, we cannot probe into all such allegations made by the writ petitioners against the appellants, particularly against the first appellant. However, since it has been complained that the law enforcing authorities viz. CMDA and the Corporation of Chennai have remained mute spectators for the illegal activities of the appellants particularly the first appellant, the writ petitioners are permitted to make a representation to the authorities concerned, if they are so advised, within four weeks from the date of receipt of a copy of this order, bringing to their notice about the alleged illegality, in which event, the CMDA and the Corporation of Chennai are directed to consider the representation and pass orders on merits and in accordance with law, after affording sufficient and reasonable opportunities to both the parties concerned, within six weeks from the date of receipt of such a representation.

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17. When the land has been assigned in the year 1994 in favour of the CMDA by way of the Gift Deed, neither the CMDA nor the Corporation of Chennai have taken any step to make use of the land for the interest of public. It is clear from the report filed by the Advocate-Commissioner and the photographs filed before us and the other materials available on record that in the OSR area, there is a katcha road, which is said to have been laid by the Corporation in the year 2003. Probably because of this katcha road and the usage of the same as road by all the residents in the locality, the occupants of the Vasanth Apartments might have felt disturbance, which would have prompted them to make a representation to the Corporation to develop a park in the said area or in the alternative to permit them to develop and maintain a park for their recreational purpose besides illegally constructing a compound wall, separating the petrol bunk and the compound wall for about a length of 30 feet separating the unbridged 11 feet wide open canal upto ground level, so as to close the way once and for all. At this juncture, it is to be pointed out that the Vasanth Apartments is divided by a compound wall from this area and it is also not made clear by the Vasanth Apartments Owners Association that the said land, which was gifted to the CMDA, is part of their lay out.

18. It has also been alleged that under similar circumstances, the CMDA has permitted all the residents associations in Velachery to maintain the open spaces as recreational parks in the nearby area viz. K.G.Apartments, Sai Sarovar etc. Each case has to be viewed and decided on its own merits and since in the case on hand, in the interest of thousands of general public residing in and around the area, the authorities have taken a wise decision to lay a road to have easy and immediate access to the 100 ft. road, the same cannot be found fault with.

19. Further more, it has been brought to our notice that with a view to form connecting road to 100 feet bye-pass road, the Chennai Corporation has already addressed the Commissioner, Hindu Religious and Charitable Endowments Department to transfer and convey the land belonging to Arulmigu Dhandeeswarar Temple, Velachery, Chennai in favour of the Corporation and also obtained the said land to form the connecting road from Hindu Religious and Charitable Endowments Department.

20. Thus, though belatedly, now the CMDA and the Corporation of Chennai are taking all efforts to lay a pucca road in the OSR area for the convenience of nearly one lakh people in the area including the residents of Vasanth Apartments. In this city, ill-famous for its bumper to bumper traffic and the related hazards faced by the road users day in and day out, any such step taken by the civic authorities to ease such bottleneck traffic congestions should be appreciated and welcomed without allowing anybody to put spokes in the wheel of development, as has been attempted on the part of the Association of Vasanth Apartments Owners in the case on hand.

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For all the above reasons, since it has been found that the writ petitioner has no right or interest, whatsoever, in the OSR land, and the prayer in the writ petition itself is misconceived, both these writ appeals are allowed, thus setting aside the order passed by the learned single Judge. No costs. Consequently, M.P.No.2 of 2007 in W.A.No.1026 of 2007 is closed.

Rao

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-6.

2.The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai.

3.The Commissioner,
HR&CE Department,
Nungambakkam,Chennai.

+1 cc to Mr.S.Kumar, Advocate Sr.No.62295.

+3 ccs to Mr.M.Mohamed Ghouse, Advocate Sr.No.62756,62296,62758.

+1 cc to Mr.R.Selvakumar, Advocate Sr.No.62462.

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